

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN AND FOR
UTAH COUNTY, STATE OF UTAH

PROVO RESERVOIR COMPANY,
a corporation,

Plaintiff,

-vs-

PROVO CITY, et al, ESTHMA
TANNER, and CALEB TANNER,
GEORGE TANNER as Agents,
Servants and Employees of
Esthma Tanner,

Defendants.

No. 2888 Civil

AFFIDAVIT AND PETITION
FOR ORDER TO SHOW CAUSE

STATE OF UTAH)
 : SS.
COUNTY OF UTAH)

J. M. BONNY, being first duly sworn, on his oath says:

That he is one of the defendants named in the above entitled action, and that he is one of the water users of Provo River, and was in said cause of action decreed a water right in Spring Creek and Provo River in Utah County, State of Utah, as a tennant in common in the right to the use of the water from the said sources. That he is familiar with the facts hereinafter set forth and makes this affidavit for and in behalf of himself and a large number of other defendants in said cause of action who were decreed certain rights in and to the said waters of Spring Creek and of Provo River, together as tennants in common, as follows:

1. That on the 2nd day of May, 1921, in the above-entitled cause, No. 2888 Civil, pending in the above entitled Court, a decree of said Court was entered adjudicating the claims of various claimants in and to the waters of said river, and in said Decree it was ordered, adjudged and decreed among other things and matters, as follows:

"That under this decree the Provo River System is sub-divided into divisions, namely: the Provo Division and the Wasatch Division. The Provo Division includes all that area below and including what is known as and commonly called the Wright Ranch, which is near the head of Provo Canyon in Wasatch County, State of Utah. The Wasatch division includes all that area above what is known as and commonly called the Wright Ranch", and "the rights to the use of water into the Provo division are herein subdivided according to dates of appropriation and as stipulated by the parties herein, and such subdivisions" are designated Classes A, B, C, D, E, F, G, H, I, J".

and that in paragraph 22 of said Decree the defendant and affiant, together with the following named defendants, to-wit: Amos Carter, Lafayette Carter, David Carter, Eliza Carter Ashton, as successor to the estate of Aaron Carter, deceased, A. L. Tanner, Esthma Tanner, James M. Bonny, Jane Williamson, sucessor to Joseph Williamson, Mary E. Davis, James F. Clyde, Evan Williams, Fredrick J. Pulham, Hugh L. Syme, N. H. Greer, D. W. Baum, Andrew Forsythe, Stephen Jones, Mary A. Brown, A. F. Snyder, Maggie Pearl Brown, Wilmirth H. Brown, Joseph M. Brown, Charles H. Davis, Fred Davies, David Johnson, Isabell West, and as successor to Szur Monson, Joseph Johnson, E. D. Partridge, Olive Smith, Ashted Taylor, George Taylor Jr., E. V. Vincent, Louisa J. Brown, J. E. Smith; were decreed rights in and to the use of said River and Spring Creek, as a tributary of said River, as tennants in common in the use of said waters designated as a Class "A" right, and that in paragraph 12, the Lake Bottom Canal Company, a corporation, was also decreed Class "A" water rights in and to said Provo River and said Spring Creek, as a tributary of said Provo River, as a tennant in common with said above-named defendants, as follows:

Lake Bottom Canal Company 1,196 Acres

From May 10th to June 20th,	Duty 80,	14.95	second feet.
" June 20th to July 20th,	" 90,	13.29	" "
" July 20th to Sept. 1st,	" 100,	11.96	" "
" Sept. 1st to May 10th,	" 125,	9.57	" "

2. That in said Decree in paragraph 131 thereof it is provided:

"It is further ordered, adjudged and decreed, that the Commissioner is hereby directed to distribute the waters herein awarded in the most economical way to prevent waste. And if it shall appear that by combining the flow of a number of parties, and giving each of them an equivalent quantity with a proper sized irrigating stream for a period of time at reasonable intervals, commonly called the rotation system thereby effecting a saving of water and at the same time meeting the full necessities of the users, said Commissioner is directed to so distribute said water."

3. That in paragraph 125 of said Decree it is provided as follows:

"It is further ordered, adjudged and decreed, that each and all of the parties to this action, and their successors in interest, whether heirs, executors, administrators, successors in interest, they and each of their agents, servants, and employees, and all persons acting for them, or in their interest, are forever enjoined and restrained from in any manner, or at all, interfering one with the other in the full free and unrestricted use of the quantity of the waters of said river awarded to them, and from in any manner, or at all, interfering with the distribution of such waters, by the Commissioner. And each and all of them are likewise enjoined and restrained from in any manner or at all wasting water."

4. That the diversion point from said Provo River for the waters decreed to the parties named in paragraph numbered one of this petition is common to all of said parties, and that part of the waters which the said parties use is taken from Spring Creek, a tributary of Provo River; that said Spring Creek flows into and is intercepted by the Lake Bottom Canal, and that a number of the said parties named in said paragraph numbered "1" take part of the waters decreed to them from the said Spring Creek.

5. That T. F. Wentz is now the duly constituted, authorized and acting Water Commissioner appointed under the Decree of said Court in the above entitled cause, with authority to distribute the waters therein awarded to the parties entitled thereto:

6. That said Esthma Tanner was one of the principal defendants in Cause No. 2888 Civil in which action the said Orders and Decrees were made, and that Caleb Tanner and George Tanner, the other defendants named in the title hereof, were at all times herein mentioned the agents, servants and employees of the said Esthma Tanner, awarded rights in said Decree. That said Decree has never been revised or modified and is now in full force and effect.

7. That the rights decreed to your petitioner and to the other parties named in paragraph "1", except the Lake Bottom Canal Company, are so small in quantity that it would result in a waste of water to allow each of said parties to use an independent continuous stream in the amount decreed to them; that in order to prevent waste of water and in order to use said waters economically it is and was necessary, that said Commissioner combine the said waters and rotate the use of the same to each of said users according to their interests as set forth in said Decree.

8. That said water Commissioner, in following the directions of said Court as set forth in said Decree, has combined the flow of the parties taking water from said Spring Creek as a tributary of Provo River and from the main channel of said River, and has distributed to each of them in equivalent quantities in a proper sized stream for a period of time at reasonable intervals; that he has directed that said water be rotated among said water users and has notified each of them of the rotation schedule adopted and the dates and the length of time that each of said users is entitled to use said waters. That said Commissioner has notified the defendant, Esthma Tanner, in writing of the times that she is entitled to the use of said rotated stream of water pursuant to her rights under the said Decree, and that such

schedule is as follows: Esthma Tanner, Rotation 7 days 12 hours, Duration 26 hours 40 minutes. Commencing. Apl. 16, 9:10p; Apl 24, 9:10a; May 1, 9:10p; May 9, 9:10a; May 16, 9:10p; May 24, 9:10a; May 31, 9:10p; Jun 8, 9:10a; Jun 15, 9:10p; Jun 23, 9:10a Jun 30, 9:10p; Jly 8, 9:10a; Jly 15, 9:10p; Jly 23, 9:10a; Jly 30, 9:10p; Aug 7, 9:10a; Aug 14, 9:10p Aug 22, 9:10a; Aug 29, 9:10p Sep 6, 9:10a; Sep 13, 9:10p Sep 21, 9:10a; Sep 28, 9:10p. TFW.

25th, 26th and 27th,
 8 A. That on May 7, 1934, and at divers times prior to said dates and subsequent to the 13th day of April, 1934, said above named defendant, Esthma Tanner, and said Caleb Tanner and George Tanner, as the agents, servants and employees of the said Esthma Tanner, in wilful disregard of said Decree and injunction, and in wilful contempt of the same and wrongfully and unlawfully, in disregard of the rights of said petitioner, and said other parties named in paragraph numbered "1" herein, have disregarded the schedule of rotation of said waters as prepared and adopted by the said water Commissioner, and have diverted and conveyed the said waters from the said Spring Creek and from the Lake Bottom Canal to and upon the lands of the said defendant, Esthma Tanner, when she was not entitled to said waters, as provided for under the said schedule of rotation; that said defendant and her said servants and employees have on said dates taken said waters out of turn and diverted them upon the lands of the said defendant, Esthma Tanner, and in violation of the rights of said other parties in and to the waters of said Spring Creek and Provo River, which had been combined by the said water Commissioner under the Decree of said Court to be used in one stream in rotation by said water users heretofore named; that by so doing, the said defendants have deprived your petitioner and the other water users named

in said paragraph numbered "1" of the use of a portion of said waters of Spring Creek and said Provo River decreed to them.

9. That your petitioner and others of said water users named herein have at divers times since the 13th day of April and prior to May 27, 1934, protested to the said defendant, Esthma Tanner, and her agents and employees against their diversion of the said waters out of turn, but notwithstanding the protests of the said petitioner and the other said parties, the said defendant and her agents and employees have wilfully continued in the wrongful acts aforesaid; your petitioner alleges that said defendant and her agents, servants and employees threaten to continue said unlawful diversions, and that unless the defendants are punished for their wrongful acts they will continue to take said water out of turn and violate the rights of your petitioner and said other parties and hold this Court and said Decree in contempt.

10. That said defendant, Esthma Tanner, and her agents and employees, in addition to taking said water out of turn on dates and times other than designated in the said rotation schedule, also take water from said Spring Creek and said Lake Bottom Canal on the times designated in the notice to the said defendant, Esthma Tanner, and divert the same upon the lands of the said defendant. That by reason of the diversion out of turn, the water supply for the other parties named in paragraph "1" herein are restricted and interfered with and limited, and that taking out of turn by said defendant of said waters interrupts and interferes with the schedule of rotation made and used by the stockholders of the said Lake Bottom Canal Company to the extent that a large number of said water users in said canal Company are deprived of a large quantity of water which, but for the interruption by said defendants, would

come to them at the periods of time they are entitled to use the same and be used upon their lands for irrigation purposes.

11. That by reason of the said defendant, Esthma Tanner, and her agents and employees taking said water out of turn as herein alleged, and also taking the said streams of water on her lands according to the schedule in addition to the water taken out of turn, the flow of said Spring Creek is interrupted, which, if said schedule of said Commissioner were followed strictly, would flow into the said Lake Bottom Canal and be distributed to the water users of that system, and that when said flow is interrupted, as herein alleged, by said defendant, Esthma Tanner, and her agents and employees, by the terms of said Decree, said water Commissioner is required to turn additional water from Provo River to the use of said parties named in paragraph "1" of this petition to make up to said parties their decreed rights, thus diminishing the supply of water which would go to the other users decreed rights in and to the waters of said River; and that it is to the advantage and benefit of all the water users named in said Decree diverting water from said River from the mouth of Provo Canyon at Olmstead, to the point where said river is discharged in Utah Lake, that said defendant, Esthma Tanner, and her agents and employees be punished for interfering with the distribution of said waters and be prevented from interfering with the distribution of said waters. That said water users should bear pro rata the expenses, except taxable Court costs, of prosecuting this proceeding, including a reasonable attorneys' fees.

12. That your petitioner and the other water users named herein and in whose behalf this affidavit and petition is made, are without sufficient water with which to irrigate their

lands because of the severe drought which now prevails and that the aforesaid acts and conduct of said defendant, Esthma Tanner, and her agents, servants and employees, is depleting their already inadequate water supply and is causing them damage which it is impossible to estimate; that by reason of the acute water shortage which now prevails, your petitioner is entitled to have the time shortened in which said defendants shall be required to show cause why they should not be punished.

WHEREFORE, your petitioner prays that said defendant, Esthma Tanner, and her said agents and employees, George Tanner and Caleb Tanner, and each of them be ordered to appear before this Court at such time as the Court may appoint; that said defendants be required to show why they violate said Decree and to show cause why they should not be punished for contempt of this Court, and that the time in which they shall be required to answer shall be shortened, and that at the conclusion of said hearing that they may be dealt with in such manner as may seem to the Court just and proper.

Your petitioner further prays that your petitioner be allowed reasonable attorneys' fees for the payment of his attorneys for the prosecution of this action, and that said expenses, including a reasonable attorneys' fees be assessed as against all the water users from said Provo River diverting waters therefrom below the Utah Power & Light power plant at Olmstead in Provo Canyon, Utah; and that the taxable costs of this action be assessed against the defendants, Esthma Tanner and her agents servants and employees, Caleb Tanner and George Tanner, and for such other relief as shall be just in the premises.

Watkins & Holbrook
attorneys for Petitioner
WATKINS AND HOLBROOK
ATTORNEYS AT LAW
ROUNDY BLDG.
PROVO, UTAH

Petitioner

Subscribed and sworn to before me this 31st day
of May, A. D. 1934.



Raymond B. Holbrook
Notary Public, residing at
Provo, Utah

WATKINS & HOLBROOK
Attorneys for Petitioner

2888

IN DIST. COURT
UTAH CO., UTAH

FILED

MAY 31 1934

Frank Salisbury Clerk

Deputy

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